Nos. 80-207, 80-213, 80-214

IN THE

Supreme Court of the United States

October Term, 1980

CBS INC. ET AL.,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF AMICUS CURIAE SUBMITTED ON BEHALF OF NATIONAL CITIZENS COMMITTEE FOR BROADCASTING NATIONAL BLACK MEDIA COALITION AMERICANS FOR DEMOCRATIC ACTION UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION STEWART RAWLINGS MOTT NATIONAL UNITY CAMPAIGN FOR JOHN ANDERSON JAMES L. BUCKLEY NATIONAL EDUCATION ASSOCIATION REP. ALBERT GORE, JR. REP. BILL FRENZEL AND JEROME BARRON

HEIDI P. SANCHEZ
(Counsel of Record)
ANDREW JAY SCHWARTZMAN
DEBORAH C. COSTLOW

MEDIA ACCESS PROJECT
1609 Connecticut Ave., N.W.
Washington, D.C. 20009
(202) 232-4300

Counsel for Amici Curiae

January 22, 1981

THE CASILLAS PRESS, INC. – 1717 K Street N.W. – Washington, D.C. – 223-1220

QUESTIONS PRESENTED

1. Whether the requirement of Section 312(a)(7) of the Communications Act of 1934, as amended (47 U.S.C. § 312(a)(7) (1976)), that broadcasters "allow reasonable access to or permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for federal elective office on behalf of his candidacy" promotes First Amendment objectives.

2. Whether the Federal Communications Commission was justified in determining, based on the record in this case, that the three commercial television networks failed to provide reasonable access to a federal candidate.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iv

INTEREST OF *AMICI* 1

SUMMARY OF ARGUMENT 7

ARGUMENT

I. THE REQUIREMENT OF SECTION 312(a)(7) THAT BROADCASTERS PROVIDE REASONABLE ACCESS TO FEDERAL CANDIDATES ADVANCES THE OBJECTIVES OF THE FIRST AMENDMENT ... 8

A. Section 312(a)(7) of the Communications Act Protects the Public's Right to Access to Political Speech 8

B. The Limited, Affirmative Right of Access Mandated by Section 312(a)(7) is Consistent with the Critical Role that Political Speech Plays in a Democracy 11

C. Section 312(a)(7) Accommodates the First Amendment Rights of Broadcasters, Candidates, and the Electorate 16

II. THE FINDING THAT REASONABLE ACCESS WAS DENIED IS SUPPORTED BY THE RECORD IN THIS CASE 19

A. The Commission's Criteria are Appropriate, Carefully Enunciated, and were Soundly Applied to the Circumstances of this Case 19

PREVIOUS PAGE WAS BLANK

B. The Risk of Partisanship Created by Assessing the Needs of Individual Candidates or by Commission Review of Broadcasters' Denial of Access is Outweighed by the Alternatives of Rigid Government Standards or Monopolistic Private Control Over the Electoral Process 23

CONCLUSION 27

TABLE OF AUTHORITIES

CASES: Page

Associated Press v. *United States*, 326 U.S. 1 (1945) 18

Buckley v. *Valeo*, 424 U.S. 1 (1976) 4, 6, 10

Columbia Broadcasting System, Inc. v. *Democratic National Committee (CBS* v. *DNC)*, 412 U.S. 94 (1973) ..... *passim*

Commissioner v. *Sternberger's Estate*, 348 U.S. 187 (1955) 11

Consolidated Edison Co. v. *Public Service Commission*, 100 S.Ct. 2326 (1980) 19

FCC v. *Midwest Video Corp.*, 440 U.S. 689 (1979) 19

Hasting's & D.R. Co. v. *Whitney*, 132 U.S. 357 (1889) 11

Morrisseau v. *Mt. Mansfield Television, Inc. et al.*, 380 F.Supp. 512 (D.Vt. 1974) 18

Red Lion Broadcasting Co. v. *FCC*, 395 U.S. 367 (1969) 8, 9, 10, 11, 12, 25

Surgett v. *Lapice*, 8 How. 48 (1850) 11

United States v. *Alexander*, 12 Wall. 177 (1871) 11

Zemel v. *Rusk*, 381 U.S. 1 (1965) 11

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS:

First Amendment to the Constitution of the United States .... *passim*

Communications Act of 1934, as amended

47 U.S.C. § 4(b) (1976) 23

47 U.S.C. § 303 (1976) 14

47 U.S.C. § 312(a)(7) (1976) ..... *passim*

47 U.S.C. § 315 (1976) 5, 12, 13, 26

Radio Act of 1927, ch.169, § 18, 44 Stat.1162 12

47 C.F.R. § 0.281 (a)(7)(iii) 13

LEGISLATIVE MATERIALS:

The Political Broadcasting Act, Hearings on S.3637 and H.R. 13721, 91st Cong., 2d Sess. (1970) 5, 6

ADMINISTRATIVE DECISIONS AND REPORTS:

Amendment of Part 73 of the Rules Regarding Personal Attacks, and Applicability of the Fairness Doctrine to Section 315 "Uses," 78 F.C.C.2d 457 (1979) 13

Campaign '76 Media Communications, Inc., 58 F.C.C.2d 1142 (1976) 17

Commission Policy in Enforcing Section 312(a)(7) of the Communications Act, 68 F.C.C.2d 1079 (1978) 14, 16

Don C. Smith, 49 F.C.C.2d 678 (1974) 16

Ed Noble for U.S. Senate Committee, 79 F.C.C.2d 903 (Broadcast Bureau 1980) 17

Hon. Donald Riegle, 59 F.C.C.2d 1314 (1976) 16, 17

Hon. Pete Flaherty, 48 F.C.C.2d 838 (1974) 16

Law of Political Broadcasting and Cablecasting, 69 F.C.C.2d 2209 (1978) 13, 17

Licensee Responsibility as to Political Broadcasts, 15 F.C.C.2d 94 (1968) 14

Licensee Responsibility Under Amendments to the Communications Act Made by the Federal Election Campaign Act of 1971, 47 F.C.C.2d 516 (1974) 16

Rockefeller for Governor Campaign, 59 F.C.C.2d 649 (1976) 14

Senator Frank Church, 37 Rad.Reg.2d (P&F) 337 (1976) 17

Senator James L. Buckley, 63 F.C.C.2d 942 (1976) 6

WALB-TV Inc., 59 F.C.C.2d 1247 (1976) 16

MISCELLANEOUS:

T. Emerson, *The System of Freedom of Expression* (1970) 25

IN THE

Supreme Court of the United States

October Term, 1980

Nos. 80-207, 80-213, 80-214

CBS INC. ET AL.,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF AMICUS CURIAE SUBMITTED ON BEHALF OF NATIONAL CITIZENS COMMITTEE FOR BROADCASTING NATIONAL BLACK MEDIA COALITION AMERICANS FOR DEMOCRATIC ACTION UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION STEWART RAWLINGS MOTT NATIONAL UNITY CAMPAIGN FOR JOHN ANDERSON JAMES L. BUCKLEY NATIONAL EDUCATION ASSOCIATION REP. ALBERT GORE, JR. REP. BILL FRENZEL AND JEROME BARRON

INTEREST OF AMICI

The *amici curiae* represented in this brief share an interest in the maintenance of a well-informed electorate through exposure to broadcast media presentations by candidates for elective office. They include members and representatives of the listening and voting public, as well as persons who have been and may again be federal candidates and

office holders whose access to the electronic media is protected by Section 312(a)(7) of the Communications Act of 1934, as amended, 47 U.S.C. § 312(a)(7) (1976). The issues to be resolved by the Court profoundly affect *amici*'s rights. All parties have agreed to *amici*'s participation, and written consents are being filed today with this Court.

The *amici* strongly support the respondents in this case. The U.S. Court of Appeals for the D.C. Circuit carefully and thoroughly reviewed the decisions of the Federal Communications Commission (Commission) below. The court properly concluded that the Commission's analysis of the issues before it reflected a thoughtful balancing of delicate, often competing First Amendment interests. The Commission's approach held government oversight of licensee discretion to the minimum necessary to ensure that the public's right to receive political speech would not be unreasonably restricted. *Amici* believe that the First Amendment is significantly advanced, not jeopardized by the court's decision below. Without disregarding any of the interests the First Amendment protects — those of speakers, opponents of speakers, and listeners, as well as those of the disseminators of the speech of others — the court correctly recognized that the most critical interest the First Amendment protects is that of the listeners who comprise the electorate. The proper balance is never more important than when, as here, the speech in question is political speech, directly related to the development of a well-informed electorate able to govern itself intelligently.

The *amici* represent no single part of the political spectrum; their concern is genuinely non-partisan. They believe that notwithstanding petitioners' suggestions that the Commission's split decisions may have been politically motivated, the decisions in fact resulted in a responsible, sound approach that protects the rights of all federal can-

didates, regardless of party, and of all members of the public to have access to some political speech. *Amici* believe that both the Commission and the Court of Appeals properly interpreted Congress' intent in enacting Section 312(a)(7) of the Communications Act, and that the provision, as applied in this case, is fully consistent with, and promotes, the First Amendment.

The National Citizens Committee for Broadcasting (NCCB), a Washington, D.C.-based nonprofit, nonpartisan public interest group with a national membership of approximately 10,000 individuals and media reform groups, participated as a party before the Federal Communications Commission[1] and as an *amicus curiae* before the U.S. Court of Appeals below[2] because NCCB's members have an interest in receiving viewpoints of candidates seeking public office. NCCB supported the complaint filed by the Carter-Mondale Presidential Committee, Inc. (CMPC) against the three commercial television networks, and NCCB later supported the Commission decisions and now supports the Court of Appeals' decision in this case, not because NCCB endorsed any particular candidate for President, but because NCCB believes the networks' refusals to sell any of the broadcast time CMPC had requested denied unreasonably the public's right to exposure to political debate.

The National Black Media Coalition is a nonpartisan grassroots membership organization concerned with national and regional issues as to programming and media

[1]NCCB's comments filed with the Commission are included in the Joint Appendix, J.A. 115-22.

[2]NCCB was joined in the *amicus curiae* brief before the Court of Appeals by National Black Media Coalition, Americans for Democratic Action, United Food & Commercial Workers International Union, Stewart Rawlings Mott, The Anderson for President Committee, James L. Buckley, National Education Association, Rep. Albert Gore, Jr., Rep. Bill Frenzel, and Jerome Barron.

control. It believes the public benefits from access to diverse viewpoints, not just those supplied by concentrated media interests.

Americans for Democratic Action is a progressive independent political action organization made up of a coalition of liberals from all segments of the public. Its members include academicians, business people, trade unionists, grassroots activists, elected officials, church leaders, professionals, and federal candidates. Prior to the August, 1980, Democratic national convention, ADA had endorsed the candidacy of Senator Edward M. Kennedy. Nevertheless, ADA's belief that the networks acted unreasonably in denying the request of the CMPC, stems from ADA's nonpartisan concern for the protection of the public's right to hear the views of all candidates seeking public office.

The United Food and Commercial Workers International Union is a Washington, D.C.-based, 1.3 million-member labor organization representing workers employed in the food and retail industries. Its members have an interest in hearing viewpoints expressed by federal candidates for public office.

Stewart Rawlings Mott is a citizen interested in receiving information presented by federal candidates, and in providing assistance to federal candidates who wish to present themselves to the electorate. He regularly contributes to the campaigns of candidates to enable them to address the public. In 1980, he aided, among others, the campaign of *amicus* Rep. John B. Anderson, who was a Republican, and then an independent, candidate for the Presidency of the United States. In 1976, Mr. Mott was a plaintiff in the case involving the constitutionality of the 1974 amendments to the Federal Election Campaign Act of 1971 whose outcome in this Court[3] dramatically shaped

[3] *Buckley* v. *Valeo*, 424 U.S. 1 (1976).

the way that federal elections were conducted in 1980. The same Act (FECA) also gave rise to the dispute presently before the Court.

The National Unity Campaign for John Anderson was created to promote the independent candidacy for the Presidency[4] of Rep. John B. Anderson. Rep. Anderson was listed on the ballot in all fifty states and the District of Columbia, and received sufficient votes to qualify for retroactive federal funding. Prior to this campaign, Rep. Anderson was a federal candidate for the House of Representatives every two years since Section 312(a)(7) was enacted. Rep. Anderson believes that the ability of future independent federal candidates to obtain access to the broadcast media will be particularly jeopardized by a reversal in this Court of the decision below, since broadcasters have consistently been unwilling to provide coverage of, or access to, non-major party candidates.[5]

---

[4]The campaign conducted by Rep. Anderson for the Republican Presidential nomination, prior to his April, 1980 announcement of his independent candidacy, was promoted by The Anderson for President Committee. That committee joined with the original group of *amici* participating before the court below.

[5]The differential treatment accorded major and third-party candidates has been acknowledged by the networks and justified by them as an appropriate editorial judgment. See, for example, statement of Julian Goodman, President, National Broadcasting Co., Inc., *The Political Broadcast Act, Hearings on S.3637 and H.R. 13721,* 91st Cong., 2d Sess. (1970), at 88:

> . . .[T]hree years ago, I pledged that the NBC Television Network would make available a total of four prime time half hours for appearances by the Presidential and Vice Presidential candidates of the major parties in the 1968 campaign. I proposed to offer the time without charge, for the candidates to use as they saw it, if Section 315 could be amended to enable us to do this. It was regrettable that the offer failed because there was no legislative sanction that would protect the network and its affiliated stations from having to offer the same number of evening half hours to

James L. Buckley was a member of the U.S. Senate, representing New York State from 1971-77. He was elected on the Conservative Party ticket. Mr. Buckley was also the named plaintiff in *Buckley* v. *Valeo, supra* note 3. During the 1976 election campaign, Senator Buckley, a federal candidate, filed a complaint under Section 312(a)(7) of the Communications Act which resulted in a finding that several stations had unreasonably denied him access, *Senator James L. Buckley*, 63 F.C.C.2d 952 (1976). In the election year just completed, Mr. Buckley was the Republican candidate for the U.S. Senate in Connecticut.

The National Education Association is the largest teacher organization in the United States, with a membership of approximately 1.8 million educators. The NEA has a long-standing commitment not only to equality of access to the communications media in this country, but also to the right of every citizen in our democracy to receive diverse information from the media. Thus, an NEA resolution recognizes the total educative effect of the communications media, whose obligations should be to provide full, constructive and accurate presentations.

Rep. Albert Gore, Jr. is a third-term Democratic Congressman representing the Fourth District of Tennessee. He may well be a federal candidate again in the future. Representative Gore has been a member of the Subcommittee on Communications of the House Interstate and Foreign Commerce Committee. Rep. Gore supports the right of

---

at least ten other Presidential candidates, ranging from the Theocratic to the National Hamiltonian parties.

Even with the enactment of Section 312(a)(7), broadcasters remain quite free to cover campaigns differentially: it is only candidate access that is regulated (equality of opportunity under Section 315(a) of the Communications Act and reasonable access under Section 312(a)(7)).

the electorate to receive political information freely through the broadcast media so that they may exercise their franchise more actively and intelligently.

Rep. Bill Frenzel is a Republican who represents the Third District of Minnesota. Currently in his sixth term, he may again be a federal candidate in the future. Rep. Frenzel believes that the fundamental issues at stake in this case transcend party lines.

Jerome Barron joins this brief in his individual capacity. As a professor and scholar of mass communications law and the First Amendment, Mr. Barron has a special interest in developing modes of legal protection for public rights of access to the media.

SUMMARY OF ARGUMENT

In our democracy, the public's First Amendment right to hear political speech is central to creating an informed electorate. Radio and television, using resources that belong to the public, today play a unique and dominant role in disseminating information necessary to make intelligent choices in the voting booth. While broadcasters have been afforded extremely broad discretion in carrying out their mandate to serve the public interest, their rights are derivative from, and subsidiary to, the rights of candidates to speak, and of listeners to hear.

To protect against broadcaster monopolization of the airwaves to the exclusion of office seekers, Congress in 1972 enacted Section 312(a)(7) of the Communications Act to lay out a specific scheme to implement the objective of ensuring the availability of candidate speech. That provision requires broadcasters to permit reasonable access to their facilities by a narrow, carefully defined group of speakers: federal candidates. The issue before the Court is whether Section 312(a)(7), as implemented by the Federal Com-

munications Commission below, is a constitutionally acceptable mechanism, incident to the spectrum allocation function, for advancing the First Amendment interests of the public and candidates without unduly infringing upon the broadcasters' discretion.

Amici, who are past and possibly future federal candidates, and members and representatives of the listening and voting public, believe that the Commission's carefully balanced and minimally intrusive implementation of Section 312(a)(7) is constitutionally sound and supported by the record. The Commission afforded great weight to the networks' editorial judgment, but properly determined that denial of access to the Carter-Mondale Presidential Committee under the circumstances of this case exceeded the bounds of reasonableness.

ARGUMENT

I. THE REQUIREMENT OF SECTION 312(a)(7) THAT BROADCASTERS PROVIDE REASONABLE ACCESS TO FEDERAL CANDIDATES ADVANCES THE OBJECTIVES OF THE FIRST AMENDMENT.

A. Section 312(a)(7) of the Communications Act Protects the Public's Right to Access to Political Speech.

As this Court so eloquently stated in *Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. 367, 390 (1969):

> It is the purpose of the First Amendment to preserve an uninhibited market-place of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee. [Citations omitted.] "[S]peech concerning public affairs is more than self-

> expression, it is the essence of self-government." [Citations omitted.] It is the right of the public to receive suitable access to social, esthetic, moral, and other ideas and experiences which is crucial here.

As the court below observed, "The public's right to be informed is nowhere stronger than in the area of elections. And, no speech is more protected than political speech."[6] "To give increased play to ideas touching the very essence of our democracy is a goal that surely lies near the heart of the first amendment."[7]

What is at stake in this case is the public's right to have access to the speech of candidates on the electronic media, rather than being unreasonably deprived of that speech by broadcasters pursuing their own private economic interests.

> Candidate access to radio, and especially television, is exceedingly important in a nation that places such extraordinary reliance on this informational media, [footnote omitted] and we dare not forget that there is also a potential for evil in leaving the question of access in the hands of private broadcasting interests.[8]

Section 312(a)(7) of the Communications Act is a narrow, minimally obtrusive tool designed to ensure that the public will not be denied access to candidate speech without good reason, while affording wide latitude to broadcasters in the exercise of their editorial function.

---

[6]Opinion for the court below in this case, Appendix A to "Appendices to Petitions for Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit" (Pet. App. A) at 45a.

[7]Tamm concurrence in this case below, Pet. App. A at 67a.

[8]*Id.*, Pet. App. A at 65a-66a.

It is precisely because political speech is so critical to the ability of the electorate to govern itself,[9] that candidate speech has always been afforded special protection. The public is entitled to hear candidates speak as they see fit. Broadcasters are licensed to use the airwaves temporarily as trustees,[10] and they may not, without unduly infringing upon the First Amendment rights of candidates and the public, refuse to sell reasonable amounts of broadcast time for direct advocacy by a federal candidate at a time when, by all objective indications, a campaign, is well underway. The three commercial television networks,[11] by refusing to sell any of the time requested by the Carter-Mondale Presidential Committee, and by not offering any reasonable alternative proposals, have violated the public's right to have access to speech by candidates, a right that is central to the First Amendment, broadly protected by the public interest standard of the Communications Act, and specifically delineated by Congress in Section 312(a)(7).

The networks would have this Court believe that Section 312(a)(7) involves only the conflicting rights of those wishing to speak: broadcasters and candidates.[12] The net-

---

[9]*See, e.g., Buckley* v. *Valeo, supra,* 424 U.S. 1 at 14-15 (1976).

[10]That "[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount" (*Red Lion Broadcasting Co.* v. *FCC, supra,* 395 U.S. at 390) should by now be beyond dispute.

[11]CBS Inc. (CBS), American Broadcasting Companies, Inc. (ABC), and National Broadcasting Company, Inc. (NBC), petitioners herein.

[12]This theme pervades respondents' briefs. The networks contend that the Commission's application of Section 312(a)(7) ignores the public by protecting candidate speech (CBS Br. at 45 and NBC Br. at 49), and they suggest that broadcasters are entitled to determine, without administrative or judicial reviews, what the listening public ought to hear (see CBS Br. at 45-46). What the networks' rhetoric fails to conceal is their paternalistic perspective that whatever speech broadcast licensees choose to carry must be what the public needs to hear.

works still seem to believe "that the First Amendment protects their desire to use their allotted frequencies continuously to broadcast whatever they choose, and to exclude whomever they choose from ever using that frequency."[13] Sadly, they remain insensitive to this Court's clear guidance that the First Amendment protects not only those who wish to speak, but those who wish to listen as well.[14] Section 312(a)(7) was intended[15] to promote the public's right to receive political speech, and it is that most critical right that *amici* urge the Court to protect.

B. The Limited, Affirmative Right to Access Mandated by Section 312(a)(7) is Consistent with the Critical Role that Political Speech Plays in a Democracy.

Petitioners ABC, CBS, and NBC contend that the Commission and the court below improperly concluded that

---

[13] *Red Lion Broadcasting Co.* v. *FCC, supra,* 395 U.S. at 386.

[14] As enunciated in *Columbia Broadcasting System, Inc.* v. *Democratic National Committee (CBS v. DNC)*, 412 U.S. 94 at 102 (1973), "Balancing the various First Amendment interests involved in the broadcast media and determining what best serves the public's right to be informed is a task of a great delicacy and difficulty."

[15] Although the legislative history of Section 312(a)(7) is not without ambiguity, *amici* believe that the interpretation contained in the brief of respondents United States and Federal Communications Commission assesses the intent of Congress as accurately as possible. Petitioners have offered no compelling indications that the Commission's interpretation is wrong, and it is therefore appropriate for this Court to afford the Commission's interpretation great deference. *CBS* v. *DNC, supra*, 412 U.S. at 121-23; *Red Lion Broadcasting Co.* v. *FCC, supra,* 395 U.S. at 381; *Zemel* v. *Rusk,* 381 U.S. 1, 11-12 (1965); *Commissioner* v. *Sternberger's Estate,* 348 U.S. 187, 199 (1955); *Hasting's & D.R. Co.* v. *Whitney,* 132 U.S. 357, 366 (1889); *United States* v. *Alexander,* 12 Wall. 177, 179-81 (1871); *Surgett* v. *Lapice,* 8 How. 48, 68 (1850).

Section 312(a)(7) imposes an affirmative right of access,[16] and that such a right would impermissibly intrude upon the broadcasters' own First Amendment rights.[17] *Amici* believe that the networks are wrong: they fail to appreciate the critical role of political speech and they mischaracterize this Court's prior interpretations of access issues.

Political speech on the electronic media has always been afforded special protection compared to other types of speech. Candidates' right to equal opportunities to use each broadcast station's facilities was recognized in the first broadcast legislation[18] and adopted in the Communications Act of 1934.[19] No other group of speakers was afforded a specific, personal right of access.[20] Moreover, broadcasters are accountable for all speech they carry except that of candidates, whose speech may

---

[16]ABC concedes that the Section "confirms a *general* right of access" (ABC Br. at 14, 21), but that review by the Commission of a broadcaster's denial of access to any individual candidate would be impermissible (ABC Br. at 43-49, CBS Br. at 14-34, NBC Br. at 34-49). Whatever right ABC perceives, ABC apparently believes it to be an unenforceable one.

[17]See ABC Br. at 30-32, CBS Br. at 34-49, NBC Br. at 17-33.

[18]Radio Act of 1927, ch. 169, § 18, 44 Stat. 1162.

[19]48 Stat. 1088 (1934), 47 U.S.C. § 315 (1976).

[20]The Commission, first in case law and later by regulation, has identified two other circumstances in which individuals (or their supporters) should have a contingent right of access: to respond to personal attacks or to political editorials. These administratively determined access rights were specifically upheld by this Court in *Red Lion Broadcasting Co.* v. *FCC, supra,* and noted more recently in *CBS* v. *DNC, supra,* 412 U.S. at 112 n.10. The networks accurately point out that all three of these circumstances involve prior broadcaster decisions, rather than initial, affirmative rights of access. But the prior lack of access rights not triggered by broadcasters' actions is precisely why Section 312(a)(7) needed to be enacted.

not be censored.[21] In addition, broadcasters selling time to candidates during certain specified periods must offer favorable rates.[22] To accommodate possible problems the broadcasters might face as a result of these obligations, the Commission has provided for certain special protections for licensees carrying such programming.[23]

While the Communications Act prior to the 1972 amendments did not expressly compel any broadcaster to provide access to a candidate for public office, the Commission has long maintained that a broadcaster failing to provide any discussion of political campaigns could not be considered to be meeting its obligation to cover controver-

---

[21]Broadcasters are prohibited from censoring candidate uses, 47 U.S.C. § 315(a) (1976).

[22]47 U.S.C. § 315(b)(1) (1976).

[23]Of particular note are a guideline permitting broadcasters to increase the amount of advertising they sell during periods of high political demand without Commission oversight, 47 C.F.R. § 0.281(a)(7)(iii); a ruling that broadcasters need not permit private citizens personally attacked by candidates to respond, *Amendment of Part 73 of the Rules Regarding Personal Attacks, and Applicability of the Fairness Doctrine to Section 315 "Uses,"* 78 F.C.C.2d 457 (1979); and a line of cases maintaining that in a campaign, fairness doctrine rights and obligations are normally confined to determinations as to whether a broadcaster has provided a reasonable opportunity for the presentation of conflicting viewpoints on the issue of "who among all the competing candidates should be chosen." *The Law of Political Broadcasting and Cablecasting,* 60 F.C.C.2d 2209, 2301 (1978). Under this case law, candidates are not deemed to have a personal right of access under the fairness doctrine to discuss why they should be elected. (Of course, candidates may get equal opportunities in response to presentations by opposing candidates under 47 U.S.C. § 315(a) (1976).)

Amici's purpose in describing these provisions is not to endorse them; rather, they are presented to illustrate that while Congress has imposed special responsibilities on broadcasters with respect to political broadcasting, the Commission has simultaneously accorded broadcasters special treatment when they provide speech by and about candidates.

sial issues of public importance.[24] But this general responsibility under the public interest standard of the Communications Act,[25] as interpreted by the Commission, is distinct from the specific obligations imposed by Section 312(a)(7) in two significant respects: the public interest standard has been considered to permit broadcasters broad discretion in determining which campaigns to cover,[26] permissibly ignoring some altogether; and the standard allows broadcasters to satisfy their fairness doctrine obligations while providing limited or possibly no access to candidates at all, so long as their overall coverage of the issue of who should be elected is adequately and reasonably balanced.[27] The public interest standard of the Communications Act, therefore, compels no affirmative or contingent right of access for any individual candidate.

Amici agree with respondents' conclusion that while no candidate had an individual, affirmative right of access prior to the enactment of Section 312(a)(7), this statutory imposition of a limited personal right of access for federal candidates is a logical measure implementing the more general special treatment that political speech has always been accorded.

Petitioners contend that the lack of an affirmative right of access for candidates prior to the enactment of Section

[24] *Licensee Responsibility as to Political Broadcasts,* 15 F.C.C.2d 94 (1968):

> [T]he presentation of political broadcasts, while only one of the many elements of service to the public, . . . is an important facet, deserving the licensee's closest attention, because of the contribution broadcasting can thus make to an informed electorate — in turn so vital to the proper functioning of our Republic.

[25] 47 U.S.C. § 303 (1976).

[26] *See Commission Policy in Enforcing Section 312(a)(7) of the Communications Act,* 68 F.C.C.2d 1079, 1091 (1978).

[27] *See, e.g., Rockefeller for Governor Campaign,* 59 F.C.C.2d 649, 650 (1976).

312(a)(7), combined with this Court's *dictum* in *CBS* v. *DNC* that the Section "essentially codified the Commission's prior interpretations of § 315(a) as requiring broadcasters to make time available to political candidates,"[28] compels the conclusion that Section 312(a)(7) imposes no right of access for federal candidates.[29] *Amici* believe that the networks are misinterpreting the language of *CBS* v. *DNC*. *Amici* understand the Court's *dictum* in *CBS* v. *DNC*[30] to be a recognition of the special role that political speech plays and an acknowledgment that broadcasters have long had some responsibility to disseminate political speech. Section 312(a)(7) was not a radical departure from the way political speech had always been treated.

But a finding that Section 312(a)(7) is consistent with the First Amendment and with the public interest standard of the Communications Act hardly supports a conclusion that the Section imposes no affirmative right of access, much less that this Court so held in *CBS* v. *DNC*. Whether the Section is considered to create a right of access for federal candidates, or merely to acknowledge or codify for certain speakers a right that had previously been recognized more generally, *amici* agree with the Commission and the court below that Section 312(a)(7) is a Congressional enactment of an affirmative right of access. It is a carefully drawn, highly specific right, limited to a narrow, exceedingly important class of speakers — federal candidates, affording them some preferential treatment over

---

[28]*CBS* v. *DNC*, *supra*, 412 U.S. at 113-14 n.12.

[29]See particularly CBS Br. at 14-34 and NBC Br. at 34-49.

[30]What was before the Court in *CBS* v. *DNC* was whether the Commission was compelled, under the First Amendment, to require broadcasters to provide some access, when sought to be purchased by private citizens, in addition to the broadcasters' fairness doctrine obligations. The Court did not determine whether Congress or the Commission could impose a general or more limited right of access for private citizens.

non-federal candidates.[31] Occasional administrative and Court review to determine whether a particular denial of access is unreasonable is entirely appropriate to protect the public's right to hear candidates speak.[32]

C. Section 312(a)(7) Accommodates the First Amendment Rights of Broadcasters, Candidates, and the Electorate.

While Section 312(a)(7) imposes an affirmative right of access for federal candidates, it is one of the most carefully limited grants imaginable. The Commission's enforcement policy has recognized the need for affording the widest permissible broadcaster discretion. Broadcasters may reasonably refuse to sell time on a particular day,[33] at a particular hour,[34] or in a particular format,[35] provided that the access they do permit reasonably accommodates

---

[31]The legislative history is silent as to the reason for limiting this right to federal candidates. It is worth noting, however, that federal officials represent larger geographic areas than most local officials. Moreover, Congress could have reasonably concluded that federal candidacies are more likely to have public importance than are local or state campaigns.

[32]*See* Section IA, *supra.*

[33]A broadcaster need not be subjected to undue disruption of regular programming, *see, e.g., Hon. Pete Flaherty,* 48 F.C.C.2d 838 (1974).

[34]While broadcasters may not refuse to sell at least some time during a particular part of a broadcast day, such as prime time (*Licensee Responsibility Under Amendments to the Communications Act Made by the Federal Election Campaign Act of 1971,* 47 F.C.C.2d 516 (1974); *Commission Policy in Enforcing Section 312(a)(7) of the Communications Act, supra,* 68 F.C.C.2d 1079, 1090), the precise placement of a program is a decision left to the broadcaster. *Commission Policy in Enforcing Section 312(a)(7), id.* at 1091.

[35]Broadcasters need not sell the precise program lengths that federal candidates seek to purchase (*Hon. Pete Flaherty, supra; Don C. Smith,* 49 F.C.C.2d 678 (1974); *WALB-TV, Inc.,* 59 F.C.C.2d 1247 (1976); *Hon. Donald Riegle,* 59 F.C.C.2d 1314 (1976), although broadcasters must allow a sufficient variety of access opportunities to

the candidate's needs.[36] The total amount of time provided to candidates is also largely left to the broadcasters' discretion.[37]

Petitioners suggest, however, that broadcasters should have both initial and ultimate discretion as to what is reasonable.[38] Even the threat that a dissatisfied candidate

---

accommodate differing candidate needs and ability to pay *(Senator Frank Church,* 37 Rad. Reg.2d (P&F) 337 (1976); *Campaign '76 Media Communications, Inc.*, 58 F.C.C.2d 1142 (1976); *Ed Noble for U.S. Senate Committee,* 79 F.C.C.2d 903 (Broadcast Bureau 1980)).

[36]Consideration of candidate needs, the criterion employed in this case that the networks most strenuously oppose (NBC Br. at 21-27, ABC Br. at 39-41, CBS Br. at 37), has always been an appropriate element in assessing what constitutes reasonable access. If there is a single unifying theme in the Commission's past resolution of reasonable access cases, it is that a broadcaster's refusal to sell the type of access sought must be evaluated by balancing the broadcaster's ability to sell the program length requested, against the suitability of alternative formats (length and frequency) that might satisfy the candidate's financial and substantive needs. This case represents no departure from prior analysis, though the Commission herein described its review process more thoroughly than before.

[37]The Commission has indicated generally:

> Stations are expected to devote time to campaigns of state and local candidates in proportion to the significance of the campaigns and the amount of public interest in them. However, the law does not require stations to permit access to candidates for *every* non-Federal office, whereas it does require them to permit access to all candidates for Federal office if the candidates request it.

The Law of Political Broadcasting and Cablecasting, 69 F.C.C.2d 2209, 2286 (1978).

[38]*See, e.g.*, CBS Br. at 38-39:

> The inescapable effect of the new right of access that the Commission and the court of appeals have discerned is to wrest editorial judgment from the broadcaster and to place it in the candidate and ultimately the Commission. Yet candidates are under no obligation to weigh the overall public interest in the use of broadcast facilities and the Commission is not charged with an editorial role.

might seek Commission assistance would, the networks say, unduly restrict their editorial judgment.[39] But the ability to make unreviewable denials of access is the ability to control who may speak to the American public, and when. To give broadcasters final authority over candidate access would permit them "to snuff out the free speech"[40] of those seeking office. Broadcaster discretion over candidate access, however broad, must be subjected upon occasion to governmental oversight.[41] The existence of administrative and judicial review permits exercise of broadcaster discretion in the first instance, but ensures that the public's right to access to candidate speech will not be unreasonably denied.

---

[39]ABC Br. at 39: "Under this scheme, broadcasters are effectively precluded from attempting to treat a campaign as a whole by assessing and responding to the needs of all candidates uniformly." Also, "requiring broadcast media access from the date when the Commission says the campaign has begun and requiring deference to an individual candidate's perceived 'needs' — effectively anoints the Commission as the ultimate decisionmaker in all matters of political access . . . . — a process of second-guessing broadcaster judgment that defies rational explanation and conflicts with deeply embedded past precedent." ABC Br. at 41. *See also* NBC Br. at 16-33.

[40]*Associated Press* v. *United States,* 326 U.S. 1, 20 (1945).

[41]The review occurs but rarely. Since Section 312(a)(7) was enacted, 435 Congressmen have been elected five times, over 150 Senatorial contests have taken place, and three Presidential elections have been held. Most, if not all, of the 5,000 or so candidates involved have probably sought access to one or more of the nearly 10,000 radio and television stations in the country. Yet the Commission has reported only approximately two dozen cases in which complaints were filed requiring Commission "intervention." The case before the Court is the first in which appellate review was properly sought (*Morrisseau* v. *Mansfield Television, Inc. et al.,* 380 F.Supp. 512 (D.Vt. 1974) was dismissed for lack of jurisdiction). Despite the expressed fears of the networks (*see, e.g.,* ABC Br. at 37 n. 49) that the Commission will be called upon much more often in the future to review broadcaster denials of access, there is no logical basis for those fears and no factual evidence whatsoever.

II. THE FINDING THAT REASONABLE ACCESS WAS DENIED IS SUPPORTED BY THE RECORD IN THIS CASE.

A. The Commission's Criteria are Appropriate, Carefully Enunciated, and were Soundly Applied to the Circumstances of this Case.

Assuming that there is no constitutional bar to the Commission's occasional review of whether a particular denial of access to a federal candidate is unreasonable,[42] and that such a review is authorized under the public interest standard of the Communications Act, by Section 312(a)(7), or both, then the issue to be resolved is whether the Commission's review in this case was conducted properly and resulted in a determination supported by the record. As the court below found, the Commission's analysis in this case was appropriate and the finding that access had been denied unreasonably is well supported by the facts herein.

To reach its determination that the access request of the Carter-Mondale Presidential Committee was timely, the

---

[42]As *amici* read this Court's statement on the constitutionality of forced access, the First Amendment does not prevent Congress or the Commission (incident to its frequency allocation authority) from imposing appropriate, narrowly drawn, access schemes. *See Red Lion Broadcasting Co.* v. *FCC, supra* (responses to personal attacks and political editorials); *CBS* v. *DNC, supra* (broadcasters need not be compelled to provide access to non-candidates; the issue as to whether they could be so compelled was not addressed); *FCC* v. *Midwest Video Corp.*, 440 U.S. 689 (1979) (general right of access to cable held overly broad); *Consolidated Edison Co.* v. *Public Service Commission*, 100 S.Ct. 2326, 2336 (1980) (even though billing envelopes, unlike the broadcast spectrum, are not a scarce resource, a utility disseminating one-sided discussions of controversial issues of public importance "might be ordered lawfully to include [opposing viewpoints] in the billing envelope"). If a licensee may be required "to share his frequency with others," *Red Lion, supra* at 389, then the government which imposes the obligation has a responsibility to protect against violations of the rights of those seeking access and those seeking to receive the speech of others.

Commission examined objective evidence as to whether the campaign had in fact begun. The Commission reviewed undisputed evidence that as of mid-November, 1979, ten candidates had already announced their intention to seek the Republican nomination, two the Democratic nomination; the delegate selection process was underway; candidates and their supporters were traveling, speaking, and raising funds; national campaign organizations were in operation; the Iowa Caucus was but two months off; endorsements had already been made; and the print and electronic media were providing extensive coverage of the campaign.[43] This examination convinced the Commission that the only reasonable conclusion was that the campaign was in full swing (Pet. App. B at 94a).

The networks offer no evidence and few arguments to rebut this conclusion.[44] Instead, they contend that any review of a broadcaster's judgment as to whether an access request is timely or premature is an impermissible intrusion on the broadcaster's discretion.[45] They imply that the

---

[43]Pet. App. B at 92a-94a. The Commission did not rely on the amount of electronic media coverage to reach its conclusion that the campaign was in full swing, out of concern that depending on evaluations of broadcast news coverage "would mean that a broadcaster could deny a candidate reasonable access simply by refusing to provide news coverage of a campaign." Pet. App. B at 94a n.26.

[44]*See* NBC Br. at 17-21, ABC at 37-39, and CBS Br. at 36-37. CBS' position as to whether the campaign was sufficiently underway to warrant provision of access differs from that of the other two networks. NBC and ABC made firm decisions that December was too early to sell time to any candidate, while CBS was willing to offer five-minute program periods, on the basis that while some access might be timely, "the public interest would not be served by selling large blocks of time to candidates so far in advance of the election." CBS Br. at 36.

[45]*See particularly* CBS Br. at 36-37; ABC Br. at 38 ("the suggestion that the Commission has some special competence to make this determination [as to when a campaign has begun] is little more than an arrogation of governmental power"); and NBC Br. at 18 n.*.

Commission did something other than determine whether the networks' refusal in this case failed to constitute "reasonable licensee discretion."[46] Yet that is all that the Commission did determine in this case. The evidence did not support a reasonable conclusion to the contrary: that the campaign had not yet begun.

As ABC quite properly points out (ABC Br. at 39), a determination that a campaign is underway does not compel a finding that broadcast time must be sold. The Commission's analysis below is fully consistent with that observation. A finding (reasonably reached by a broadcaster or determined by the Commission to be not reasonably disputable) that a campaign has begun simply starts the analysis as to whether access may reasonably be denied.

The criteria enunciated by the Commission as appropriate considerations for determining whether access need be granted[47] were carefully applied by the Commission to the facts of this case. Because the statements of the case presented by petitioners and respondents amply describe the circumstances at issue, *amici* will limit the discussion herein to a few significant points.

The request made by the Carter-Mondale Presidential Committee could not have been more accommodating of the networks' needs. It was a request to purchase a single half hour at regular commercial rates, during any of several half hour, prime time slots on any of four days. The re-

[46]NBC Br. at 18 n.*.

[47]As summarized by the court below, these include:

> (a) the individual needs of the candidate (as expressed by the candidate); (b) the amount of time previously provided to the candidate; (c) potential disruption of regular programming; (d) the number of other candidates likely to invoke equal opportunity rights if the broadcaster grants the request before him; and (e) the timing of the request.

Pet. App. A at 33a.

quest was made two months ahead of time. As explained by the candidate's campaign committee, the timing was necessary to coincide with the candidate's announcement to seek reelection and with prearranged fundraising gatherings around the country. Moreover, the half hour was requested to enable the candidate to discuss his past three years in office and the reasons why he should be reelected. It was the candidate's first request for access.

But all three networks refused. They described no major disruption of their regular programming that the access would entail and offered mere speculation about other potential requests were one of the candidates to be permitted access. They were unconcerned with the fact that the candidate expressed strong need for the requested access. Instead, the networks decided that their regularly scheduled comedies, sports, and other nonpolitical programming, combined with the networks' own news coverage,[48] were sufficient[49] to satisfy the public's right "to receive suitable access to social, esthetic, moral, and other ideas and experiences,"[50] including political speech.[51] The networks offered no alternative access that might have satisfied the

---

[48]NBC Br. at 33: "there is no contention here, nor could there be, that at the time of his request Mr. Carter had not received enormous amounts of coverage on the NBC Network;" and CBS at 46: "In any event, the public interest in receiving information on political matters is fully served by the broadcaster's journalistic coverage [footnote omitted] and the preexisting Commission policy [as contrasted with its interpretation of Section 312(a)(7) in this case]."

[49]*See, e.g.*, CBS Br. at 36.

[50]*Red Lion Broadcasting Co.* v. *FCC, supra,* 395 U.S. at 390.

[51]Indeed, it is of particular importance that candidates have the unfettered opportunity to make their own views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on election day.

Buckley v. *Valeo, supra,* 424 U.S. 1 at 52-53 (1976).

candidate's needs, and failed to explain why their denials were reasonable. Under these circumstances, the Commission had no choice but to find that access had been unreasonably denied.

B. The Risk of Partisanship Created by Assessing the Needs of Individual Candidates or by Commission Review of Broadcasters' Denial of Access is Outweighed by the Alternatives of Rigid Government Standards or Monopolistic Private Control Over the Electoral Process.

Judge Tamm, in his concurrence below,[52] and all three of the networks[53] have expressed a concern that Section 312(a)(7), as implemented by the Commission, carries some risk of government nonneutrality. *Amici* agree, but share Judge Tamm's view[54] that the risk of governmental partisanship has been satisfactorily contained so long as the Commission, as it has in this case, carefully follows the standards it has enunciated in implementing Section 312(a)(7).

Enunciation and application of neutral standards is one very important protection against governmental partisanship. There are others as well. While the networks accurately point out [55] that Commissioners are appointed by the President and often choose not to serve their full seven-year term (thereby permitting Presidents more than the approximately one per year that Congress specified), the Communications Act prohibits more than four Commissioners to be members of the same party.[56] Commissioners

---

[52] *Passim*, Pet. App. A at 56a-68a.

[53] CBS Br. at 46-48, NBC Br. at 20-25, ABC Br. at 43-49.

[54] Pet. App. A at 67a.

[55] *See, e.g.*, NBC Br. at 21-22 n.*.

[56] 47 U.S.C. § 4(b) (1976).

are traditionally members of the two major parties, and may at times be unsympathetic to the inequities that third party candidates often face, but the Communications Act does afford some protection against partisanship.[57] Equal protection principles guarantee that the Commission's case law will be applied similarly to complaints from candidates of any political party.

Another powerful protection against possible governmental nonneutrality is the existence of competing candidates' rights to equal opportunities once access has been provided under Section 312(a)(7).[58]

A further protection against Commission partisanship is the requirement that Commission decisions be made in open meetings. Members of the public may attend (or obtain tapes of) meetings, and draw attention to apparent partisanship.

Most importantly, the existence of court review is a very significant check on any Commission partiality. Any Commission finding that a denial of access was or was not reasonable must be based on the record, and if the deci-

---

[57]As Judge Tamm (Pet. App. A at 64a-65a n.16) and NBC (NBC Br. at 22 n.*) point out, there have at times been inexcusable pressures from the White House placed on broadcasters. But the Commission is an independent regulatory agency subject to Congressional scrutiny and judicial review, and no sitting President has ever succeeded in having a broadcaster lose a license. That improper Presidential pressures must surely be guarded against, however, bears little relevance to this case.

[58]*See* Tamm concurrence, Pet. App. A at 68a n.22. Thus even if the opposing candidate might not have succeeded in obtaining access on his own, contingent access is assured by Section 315.

sion lacks objective support, it can and should be overturned by the courts.[59]

As discussed previously (note 23, *supra*), Commission intervention to ascertain whether Section 312(a)(7) has been violated is rare. As with the best kind of safety net regulation, the success of Section 312(a)(7) can be judged by its self-enforcing impact in actual operation. The mere presence of the statute has tended to encourage voluntary compliance. The scarcity of past Commission decisions under the Section illustrates that the Commission policies and procedures encouraging negotiation and conciliation have been successful in minimizing governmental intrusion.

If the public's right to access to political information is to be protected, there are only two alternatives that *amici* see to the present scheme. One is rigid, arbitrary governmental standards establishing a uniform mandatory system of access for all candidates, without regard to individual candidate or broadcaster needs. The other is relying on broadcasters' good faith to put the public interest in every case above the broadcasters' financial interests. But both of those alternatives have serious drawbacks.

The networks already have enormous control over what information the American public receives.[60] Broadcasters

---

[59]A candidate denied access may take an appeal. A broadcaster found to be unreasonable and continuing to refuse to provide access may take an appeal. A candidate opposing one provided access may request equal opportunities and if refused, may complain to the Commission and appeal to the Courts. Thus a wrong decision by the Commission is not without recourse.

[60]*See, e.g.*, T. Emerson, *The System of Freedom of Expression* (1970); *Red Lion Broadcasting Co.* v. *FCC, supra,* 395 U.S. at 392; Tamm concurrence, Pet. App. A at 65a-66a; Brennan and Marshall dissent in *CBS* v. *DNC, supra,* 412 U.S. at 195: "Indeed, the electronic media are today 'the public's prime source of information' " (footnote omitted).

have nearly unlimited discretion to determine what issues get discussed, when, and by whom.[61] Except for the contingent access recognized under Section 315 of the Communications Act and the Commission's personal attack and political editorializing rules, and except for the limited affirmative right of access imposed by Section 312(a)(7), "broadcasters retain almost exclusive control over the selection of issues and viewpoints to be covered, the manner of presentation, and, perhaps most important, who shall speak."[62] In view of the enormous impact of the electronic media in shaping the public's opinions, and of the almost total control that broadcasters have over the public's access to information, a decision to leave candidate access entirely in the discretion of broadcasters would seriously jeopardize the integrity of the electoral process. However well intentioned and nonpartisan the networks (and other broadcasters) might be, their power to determine what candidates may speak to the American public and when cannot be insulated from review. Commission and court oversight, however rare, is absolutely vital to protect the public's fundamental right to access to ideas on these most crucial media – a right that is essential to informed self-government.

Though ultimate licensee control bears enormous risks, rigid governmental standards are also undesirable. Across-the-board mandatory standards establishing amounts, types, and timing of access for political speakers would deprive broadcasters to a far more significant extent of their editorial discretion, and would be likely to deprive candidates of their right to speak as they choose, consistent with their individual needs and strategies. Such a result would seriously impede the First Amendment.

---

[61] *See, e.g.,* dissent by Justices Brennan and Marshall in *CBS* v. *DNC, supra,* 412 U.S. at 182-92 and Commission policy statements stated *id.* at 186 n.20.

[62] *Id.* at 186.

In short, Congress made a very sound choice when it enacted Section 312(a)(7). By imposing a limited right of affirmative access for a narrow group of special speakers, Congress struck a careful balance of competing First Amendment rights, enhancing the ability of the public to get access to candidate speech while intruding minimally on broadcasters' discretion. The Commission's implementation of the Section over the years, and specifically in this case, has been consistent with the delicate balance that Congress struck, and fully cognizant of the competing rights that the First Amendment protects.

The Commission's decision in this case was appropriate, fully supported by the record, and in furtherance of First Amendment goals; the Court of Appeals' decision upholding the Commission should be affirmed.

CONCLUSION

The decision of the Court of Appeals for the District of Columbia Circuit should be affirmed,

Respectfully submitted,

HEIDI P. SANCHEZ
ANDREW JAY SCHWARTZMAN
DEBORAH C. COSTLOW

MEDIA ACCESS PROJECT
1609 Connecticut Ave., N.W.
Washington, D.C. 20009
(202) 232-4300

Counsel for Amici Curiae

January 22, 1981

see 80
213

see 80

214